

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NIPPONKOA INSURANCE COMPANY, LTD., a/s/o
French Japanese Educational Institute and other
interested insureds under the Policy of Insurance,

08 Civ. 6072

**LOCAL RULE 7.1
STATEMENT**

Plaintiff

-against-

MC GOWAN BUILDERS, INC. and ARISTA AIR
CONDITIONING CORP.

Defendants.
-----X

PURSUANT TO RULE 7.1 [Formerly Local General Rule 1.9] OF THE
LOCAL RULES OF THE US DISTRICT COURT FOR THE SOUTHERN AND
EASTERN DISTRICTS OF NEW YORK AND TO ENABLE JUDGES AND
MAGISTRATE JUDGES OF THE COURT TO EVALUATE POSSIBLE
DISQUALIFICATION OR RECUSAL, THE UNDERSIGNED COUNSEL FOR
ARISTA AIR CONDITIONING CORP. (A PRIVATE NON-GOVERNMENTAL
PARTY) CERTIFIES THAT THE FOLLOWING ARE CORPORATE PARENTS,
AFFILIATES AND/OR SUBSIDIARIES OF SAID PARTY WHICH ARE
PUBLICLY HELD:

NONE

Dated: New York, New York
August 6, 2008

Yours etc.
CARTAFALSA, SLATTERY TURPIN & LENOFF

By: 

PATRICIA ZINKE (8632)
Attorneys for Defendant
ARISTA AIR CONDITIONING CORP.
165 Broadway - 28th Floor
New York, New York 10006
(212) 225-7700

TO:
Sheps Law Group
Attorneys for Plaintiff
35 Pinelawn Road, Suite 106E
Melville NY 11747
(631) 249-5600

MC GOWAN BUILDERS, INC.
1200 Patterson Plank Rd.
North Bergen, NJ 07047

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NIPPONKOA INSURANCE COMPANY, LTD., a/s/o
French Japanese Educational Institute and other
interested insureds under the Policy of Insurance,

08 Civ. 6072

VERIFIED ANSWER

Plaintiff

-against-

MC GOWAN BUILDERS, INC. and ARISTA AIR
CONDITIONING CORP.

Defendants.
-----X

Defendant, and ARISTA AIR CONDITIONING CORP., by CARTAFALSA,
SLATTERY, TURPIN & LENOFF, its attorneys, answering the plaintiff's
complaint herein, respectfully shows to the Court, upon information and belief,
the following:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Defendant denies any knowledge or information sufficient to form
a belief as to any of the allegations contained in paragraphs of plaintiff's
complaint numbered and designated as 1, 2, 3, 5, 6, 7, 8, 9, 10, 11 and 13.

SECOND: Defendant denies each and every allegation contained in
paragraph of plaintiff's complaint numbered and designated as 12.

ANSWERING A SECOND CAUSE OF ACTION

THIRD: In answer to paragraph 14, defendant repeats and reiterates
each and every answer made to paragraph 1 to 13 inclusive, with the same force
and effect as though set forth herein once again at length.

FOURTH Defendant denies each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 15 and 16.

ANSWERING A THIRD CAUSE OF ACTION

FIFTH: In answer to paragraph 17, defendant repeats and reiterates each and every answer made to paragraphs 1 to 16 inclusive, with the same force and effect as though set forth herein once again at length.

SIXTH: Defendant denies each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 18, 19 and 20.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

SEVENTH: That if the plaintiff's subrogee sustained damages as alleged in the Complaint, said damages would have been brought about and caused in whole or in part by the plaintiff's subrogee's own negligent and/or culpable conduct.

EIGHTH: That any damages to which plaintiff may become entitled should be diminished in the same proportion, as plaintiff's subrogee's own negligent and/or culpable conduct bears to the total negligent and/or culpable conduct responsible for the damages sustained.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

NINTH: If the answering defendant is found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable and therefore these answering defendant's liability shall be limited to their equitable share, pursuant to CPLR Article 16.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

TENTH: Upon information and belief, any past or future costs or expenses incurred has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

AS AND FOR A CROSSCLAIM AGAINST CO-DEFENDANT, MC GOWAN BUILDERS, INC., THE ANSWERING DEFENDANT, ARISTA AIR CONDITIONING CORP., ALLEGES UPON INFORMATION AND BELIEF:

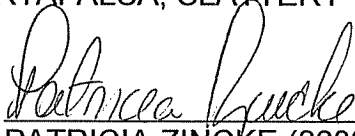
ELEVENTH: That if the plaintiff or plaintiff's subrogee ws caused to sustain damages at the time and place set forth in plaintiff's Complaint and in the manner alleged therein through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty and/or contract and/or strict tort liability other than of the plaintiff's or plaintiff's subrogee's, then the said damages arose out of the carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or obligations, and/or Statute and/or warranty and/or contract in fact or implied in law, upon the part of the co-defendant of the pleading defendant, with indemnification and save harmless agreement and/or responsibility by them in fact and/or implied in law, and without any breaches or any negligence of the pleading defendant contributing thereto, and if the pleading defendant are found negligent as to the plaintiff for damages as set forth in the plaintiff's Complaint, then and in that event, the relative responsibilities of all said defendants in fairness must be apportioned by a separate determination, in view of the existing factual disparity, and the said co-defendant herein will be liable over jointly and severally to the pleading defendant

and bound to fully indemnify and hold the pleading defendant harmless for the full amount of any verdict or judgment that the plaintiff herein may recover against the pleading defendant in this action, including all costs of investigation, disbursements, expenses and attorneys' fees incurred in the defense of this action and in the conduct of this cross complaint.

WHEREFORE, Defendant, ARISTA AIR CONDITIONING CORP., demands judgment dismissing the plaintiff's Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
August 6, 2008

Yours etc.
CARTAFALSA, SLATTERY TURPIN & LENOFF

By: 
PATRICIA ZINCKE (8632)
Attorneys for Defendant
ARISTA AIR CONDITIONING CORP.
165 Broadway - 28th Floor
New York, New York 10006
(212) 225-7700

TO:
Sheps Law Group
Attorneys for Plaintiff
35 Pinelawn Road, Suite 106E
Melville NY 11747
(631) 249-5600

MC GOWAN BUILDERS, INC.
1200 Patterson Plank Rd.
North Bergen, NJ 07047

VERIFICATION


PATRICIA ZINCKE, an attorney duly licensed to practice law in the Courts of the State of New York, affirms the following under penalty of perjury:

That she is an associate of the firm of CARTAFALSA, SLATTERY, TURPIN & LENOFF, Attorneys for defendant, ARISTA AIR CONDITIONING CORP., in this action; that she has read the foregoing Answer and knows the contents thereof, and that the same is true to the knowledge of affirmant except as to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true:

That the reason why this verification is made by affirmant and not by defendant is that the defendant is a domestic corporation, and none of its officers is now within the County of New York where affirmant has her office.

That the sources of affirmant's information and the grounds of her belief as to all the matters in said Answer alleged upon information and belief are reports from and communications had with the defendant.

DATED: New York, New York
August 6, 2008


PATRICIA ZINCKE (8632)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NIPPONKOA INSURANCE COMPANY, LTD., a/s/o
French Japanese Educational Institute and other
interested insureds under the Policy of Insurance,

08 Civ. 6072

AFFIDAVIT OF
SERVICE

Plaintiff

-against-

MC GOWAN BUILDERS, INC. and ARISTA AIR
CONDITIONING CORP.

Defendants.

-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

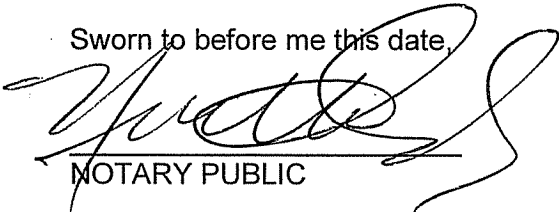
1. MARGARET DAMITZ, being duly sworn, deposes and says; that deponent is not a party to this action, that she is of 18 years and upwards; and that she is a Clerk in the offices of CARTAFALSA, SLATTERY TURPIN & LENOFF attorneys for Defendant, ARISTA AIR CONDITIONING CORP. in the above entitled action; that the office address of said attorneys is 165 Broadway, New York, New York 10006;
2. That on deponent served upon:

Sheps Law Group
Attorneys for Plaintiff
35 Pinelawn Road, Suite 106E
Melville NY 11747

MC GOWAN BUILDERS, INC.
1200 Patterson Plank Rd.
North Bergen, NJ 07047

a true copy of the annexed RULE 7.1 STATEMENT AND VERIFIED ANSWER by depositing same properly enclosed in a postpaid wrapper in the U.S. Post Office Box at 165 Broadway, New York, New York on said date, directed to said attorneys at the above address(es) designated by said attorneys in the last paper served herein.

Sworn to before me this date,


NOTARY PUBLIC

YVETTE CORTES
Notary Public, State of New York
No. 01CO6079762
Qualified in New York County
Commission Expires 09/03/2010


MARGARET DAMITZ

Index No.: 6072
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiff

-against-

MC GOWAN BUILDERS, INC. and ARISTA AIR CONDITIONING CORP.

Defendants.

RULE 7.1 STATEMENT AND VERIFIED ANSWER

CARTAFALSA, SLATTERY, TURPIN & LENOFF

Attorneys for Defendant(s)

ARISTA AIR CONDITIONING CORP.

165 Broadway - 28th Floor
New York, New York 10006
(212) 225-7700

TO:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

☐

Notice of Entry

that the within is a (certified) true copy of a(n) entered in
the office of the within named Court on , 200

☐

Notice of Settlement

that an Order of which the within is a true copy will be presented for
settlement to the Hon. , one of the judges of the within named
Court, at on , 200 , at 9:30 a.m.

Dated: New York, New York